

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9494 of 1992

For Approval and Signature:

Hon'ble MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
 5. Whether it is to be circulated to the Civil Judge? : NO

CHANDRAKANT R GANDHI

Versus

STATE OF GUJARAT

Appearance:

MR BIPIN I MEHTA for Petitioner
Mr N D Gohil, AGP for Respondent No. 1
RULE SERVED for Respondent No. 2, 5
MR BC DAVE for Respondent No. 3
NOTICE SERVED for Respondent No. 4

CORAM : MR.JUSTICE D.P.BUCH

Date of decision: 24/11/2000

C A V. JUDGEMENT

The present petition has been filed by the

petitioner above named under Article 226 of the Constitution of India for appropriate writ, order or direction directing the respondents to grant the petitioner pay scale of Rs.425-700, in the Desai Pay Commission and Rs.1400-2600 in Fourth Pay Commission and further directing the respondents to pay arrears of salary of the abovesaid pay scales to the petitioner with interest of 18% p.a., thereon from the date on which other employees are given the above said benefits, calculating the difference between the salary payable and paid. The petitioner has further claimed for a declaration that the petitioner is entitled to get pay scales of Rs.425-700 in Desai Pay Commission and Rs.1400-2600 in Fourth Pay Commission. The facts may be briefly stated as follows:

2. The petitioner was initially appointed on the post of Clerk-cum-Typist (English) on 16.7.1968. Thereafter, a post of Shop Inspector had fallen vacant in Lunavada Nagar Panchayat in the year 1970. The petitioner, according to him, was possessing necessary qualifications for the post of Shop Inspector and, therefore, he applied for the said post and under a Resolution of the said Nagar Panchayat dated 19.6.1970, the petitioner was resolved to be appointed on the said post. Thereafter, it was also resolved that the petitioner would be getting pay scale prescribed by the State Government. The said Resolution has been produced at Annexure 'A' to the petition.

3. The said Panchayat, passed a second Resolution dated 18.9.1971 wherein it was stated that earlier it was resolved to create/sanction the post of Shop Inspector. It was also resolved that the pay scale of shop Inspector would be Rs.130-270. A true copy of the said resolution is annexed at Annexure 'B'.

4. The petitioner has further contended that said Panchayat passed an order dated 30.12.1971 appointing the petitioner on the post of Shop Inspector. However, he was given pay scale of Rs.70-125. The petitioner took over the said position w.e.f. 1.1.1972. A true copy of the order dated 30.12.1971 has been placed at Annexure 'C'. The petitioner claims that the post of Shop Inspector is a permanent post and it has been duly sanctioned by the State Authority. That the petitioner ought to have been given pay scale of Rs.130-270. That however, he was given pay scale of Rs.70-125 due to the reasons best known to the respondents. It is further contended that the revised pay scale to the said post is Rs.130-270 and the Sarela pay scale for the said post is

Rs.200-400. The petitioner also contended that the respondents have issued certain Resolutions and one of the resolutions has been placed at page 34 dated 31.1.1992. The petitioner claims that he is entitled to the benefit of the pay scales mentioned in the said Resolution. The petitioner claims that despite the fact that he was duly appointed as Shop Inspector, and is qualified for the said appointment and that the Government has passed the aforesaid Resolution dated 31.1.1992 entitling the petitioner to a particular pay scale, the respondents have not extended the aforesaid pay scale and, therefore, the present petition has been filed by the petitioner for the aforesaid pay scale and for the aforesaid relief.

5. On receipt of the petition, notice was issued at the first instance, and thereafter, rule was issued. Mr N D Gohil, learned AGP appears on behalf of respondent State in response to the service of rule. Mr N D Gohil, learned AGP also appears on behalf of respondents no.4 and 5. Mr B C Dave, learned Advocate appears on behalf of respondents no.2 and 3. It appears that a communication was received by the High Court dated 6.1.2000 from the office of the Director of Municipalities, which is kept on record. It is stated therein that the representation of the petitioner has been disposed of and order dated 5.1.2000 has been issued to the petitioner fixing the pay scale of the petitioner. The Chief Officer of respondent no.3 Lunavada Municipality has filed affidavit, which is placed at page 58 to the petition.

6. Heard the learned Advocates for the parties and perused the papers. The facts as emerge from the above are not very much in dispute. Learned Advocate for the petitioner has substantially concentrated on the point that the Government has passed Resolution dated 31.1.1992 which has been annexed at page 34 to the petition. It has been argued on behalf of the petitioner that the petitioner is entitled to pay scale as per this resolution of the government and, therefore, an order is required to be passed directing the respondents to grant to the petitioner the scale mentioned in the said resolution and further directing the respondents to pay salary and allowances to the petitioner in the new pay scale. It is further argued that the respondents be directed to pay to the petitioner the arrears and difference of the amount payable to the petitioner as per the resolution and the amount actually paid to the petitioner according to the records of the respondents. It is, therefore, necessary to consider this resolution

placed at page 34 dated 31.1.1992. Learned Advocate for the petitioner has relied upon Note 3, which is annexed at page 54 of the petition. It shows that the persons working on the posts mentioned in this note will be entitled to pay scales indicated therein. It is, therefore, necessary to consider this note for the purpose of deciding the case of the petitioner, since this may not be the only issue between the parties. The translated version of Note 3 can be read as follows:

"The persons working as Head Clerk, Head Clerk-cum-Accountant, Head Clerk-cum-Shop Inspector, General Clerk, Accountant, Chief Accountant, Head Accountant or Octroi Accountant etc. and working in Gram or Nagar Panchayat etc. are entitled to pay scales of Rs.1400-2600 as per the resolution dated 26.11.1989".

Learned Advocate for the petitioner therefore, claims that the petitioner should be held to be entitled to pay scale of Rs.1400-2600 as per the aforesaid first resolution annexed at page no.54. Learned Advocate for the petitioner also has drawn my attention to the provisions made in the said note no.3 with respect to the pay scales prescribed for Head Clerk-cum-Shop Inspectors. There is no post of Head Clerk-cum-Shop Inspectors on the establishment of the respondent. Therefore, it is argued that the petitioner should be treated to be Head Clerk-cum-Shop Inspector and the respondents should be directed to pay the aforesaid pay scale to him. It is not possible to accept the said argument advanced on behalf of the petitioner. It is very clear that this resolution applies to the Head Clerk-cum-Shop Inspectors only and not to the Shop Inspectors. If they were interested in giving benefit of this resolution even to Shop Inspectors, then the State Government would have certainly included the post of Shop Inspectors in Note 3, when so many other posts have been specifically mentioned in note 3. There was no reason to exclude the post of Shop Inspector. The State Government has already excluded the post of Shop Inspectors. It is, therefore, clear that the Shop Inspectors are not included in note no.3 and there is no other Resolution entitling the petitioner to get the aforesaid pay scale of Rs.1400-2600 as mentioned at page Nos. 34 and 54. The petitioner does not stand covered by this resolution and the said resolution does not apply to the Shop Inspector's post, on which the petitioner has been working. In the circumstance, in my opinion, this resolution does not extend the benefits to the post of Shop Inspectors and consequently, the petitioner is not entitled to the

benefit of pay scale of Rs.1400-2600 on the strength of this resolution in general and note 3 in particular which does not apply to him.

7. This is the only prayer put forwarded by the petitioner during the course of his argument. As stated above, the petitioner is not entitled to the benefits of the aforesaid Resolution of 31.1.1992 and the said resolution does not apply to the position held by the present petitioner. When the petitioner does not stand covered by the said resolution dated 31.1.1992 and when the aforesaid resolution does not apply to the petitioner, there is no force in the argument advanced by the learned Advocate for the petitioner that the benefit of the said resolution extended to the petitioner. This establishes that the petitioner is entitled to the relief claimed by him. The petitioner has claimed the relief only on the strength of the applicability of the resolution dated 31.1.1992. Once it is found that this resolution does not apply to the petitioner holding the post of Shop Inspector, there is no merit in this petition. It is required to be mentioned here that the learned Advocate for the petitioner submits that if it is found that the resolution does not apply to the case of the petitioner, then, there is no further order to be passed by this court as the petitioner would not be entitled to the benefit of the aforesaid pay scale. In the facts and circumstances of the case, in my opinion, this Resolution dated 31.1.1992 does not apply to the petitioner and, therefore, the petitioner is not entitled to the pay scale mentioned in note 3 of the resolution dated 31.1.1992. Consequently, there is no merit in this petition and no relief can be extended to the petitioner in this petition. The resultant effect is the petition is required to be dismissed.

7. The petition is accordingly dismissed. Rule is discharged. In the facts and circumstances of the case, there shall be no order as to costs.

24.11.2000 [D P Buch, J.]
msp.